

orable A. W. Terrell, a member of this body, and removed therefrom his little daughter, Betsy Terrell; therefore,

*Be it resolved by the Senate,* That we sympathize deeply with the bereaved father and his family, and as a token of respect, that the Senate do now adjourn until to-morrow morning at 9 o'clock; and that a copy of the resolution be presented to the family by the Secretary.

Adopted, by the following vote:

YEAS—Senators Ball, Blassingame, Brady, Brown, Burton, Crain, Douglass, Edwards, Francis, Ford, Grace, Guy, Henry J. R., Henry F. M., Hobby, Ledbetter, Martin, McLeary, McCulloch, Moore, Motley, Piner, Ripetoe, Smith, Stephens, Storey, Thompson, Wortham—28.

The vote was unanimous, all voting in the affirmative that were present.

The Senate then adjourned until to-morrow morning at 9 o'clock.

## SEVENTY-EIGHTH DAY.

SENATE CHAMBER,  
AUSTIN, TEXAS, July 19, 1876. }

Senate met pursuant to adjournment. President in the chair. Roll called. Quorum present. Prayer by the Chaplain.

Journal of yesterday adopted.

Senator Brown, on motion of Senator Hobby, was excused until 11 o'clock A. M.

Senator McLeary, Chairman of the Committee on State Affairs, submitted the following report:

*Hon. R. B. Hubbard, President of the Senate:*

Your Committee on State Affairs, to whom was referred House Bill No. 239, "An Act to incorporate the city of Galveston, and grant a new charter," have had the same under consideration, and have instructed me to report the bill back with the accompanying amendments, and with the recommendation that the bill, amended as your committee propose, be passed.

McLEARY, *Chairman.*

In Title 2, Article 1, Section 3, line 12, insert after the parenthesis, the word, "Auditor."

In Title 3, Article 10, Section 20, line 16, insert after the word, "Mayor," the words, "and by the Auditor."

Article 11, Section 21, line 10, after the word, "Clerk," insert, "and Auditor."

Article 12, line 7, strike out, "City Clerk," and insert, "Auditor."

In Title 3, insert the following Article and Section:

"ARTICLE 13. Section 23. It shall be the duty of the Auditor to examine in detail, all bills, accounts and claims against the city, and if found correct, sign his name in approval; but if found incorrect, he shall return them to the appropriate committee or the City Council, with his objections thereto. It shall be his duty to examine the books of all the officers of the city, and if they should be found incorrect, to make a report of the same to the City Council; and he shall render such other services, from time to time, as the City Council may direct, and shall receive for his services such compensation as the City Council may determine, not to exceed eighteen hundred dollars per annum, and shall

give bond for the faithful performance of his duties, in the sum of ten thousand dollars."

Correct the numbering of subsequent articles and sections to correspond.

To Title 4, Article 3, Section 51, add the following proviso, viz: "*Provided*, that Public Weighers appointed by the Governor, under act of the Fourteenth Legislature, for the city of Galveston, shall in no way be interfered with; and the produce named in said act which they were appointed to weigh, shall not be weighed by the City Weighers while said act of the Fourteenth Legislature is in force."

The following communication was received from His Excellency, the Governor:

EXECUTIVE OFFICE, STATE OF TEXAS, }  
AUSTIN, July 17, 1876. }

*Hon. R. B. Hubbard, President of the Senate:*

SIR:—I have the honor to hand you herewith, a list of all the bills and joint resolutions approved by me since June 8, 1876.

Very respectfully, RICHARD COKE.

Senate Bill No. 168—"An Act to make an appropriation to supply a deficiency in the appropriation for postage, to be used in the office of Secretary of State, for the fiscal year, ending August 31, 1876." Approved June 8, 1876.

House Bill No. 26—"An Act to amend Section 2 of an act concerning divorce and alimony, passed January 6, 1841." Became a law without the Governor's approval.

House Joint Resolution No. 23—"Joint Resolution validating the election for County Treasurers, County Surveyors and Inspectors of Hides and Animals, held on the 15th day of February, 1876." Approved June 12, 1876.

House Bill No. 86—"An Act making appropriation of the Fourteenth Legislature for frontier defense available for payment of deficiency of previous year for same purpose." Approved June 15, 1876.

House Bill No. 181—"An Act to provide for the expenses and compensation of the Commission appointed by His Excellency, Governor Coke, April 10, 1875, to investigate the management of the State Penitentiary, and to make an appropriation therefor." Approved June 15, 1876.

Senate Bill No. 2—"An Act to organize the County Courts, and define their powers and jurisdiction." Approved June 16, 1876.

Senate Bill No. 18—"An Act to amend an act entitled, 'An to amend Article 382, Title 2, Chapter 3, of the penal code,' approved October 26, 1866, amendatory of an act entitled, 'An Act to establish the penal code,' approved August 28, 1856." Approved June 20, 1876.

Senate Bill No. 26—"An Act to require the Clerks of District and County Courts of this State to provide and keep indexes, and cross-indexes of the names of the parties to all causes in their courts, and to provide a penalty for their failure to comply with the provisions of this act." Approved June 21, 1876.

House Joint Resolution No. 182—"Joint Resolution to provide for the survey, condemnation, and sale of certain property belonging to the State of Texas." Approved June 21, 1876.

House Bill No. 120—"An Act to fix the amount of jury fees in the District, County, and Justices' Courts." Approved June 21, 1876.

House Bill No. 43—"An Act to permit the transfer of certain suits from one court to another." Approved June 21, 1876.

House Bill No. 135—"An Act to make persons liable for damages to the owner for buying stolen property after night-fall." Approved June 22, 1876.

House Bill No. 100—"An Act to prevent the removal of rock, earth, sand, coal, slate or minerals, from the premises of another, and prescribing a punishment therefor." Approved June 24, 1876.

House Bill No. 1—"An Act making an appropriation of forty thousand dollars to complete and furnish the State Agricultural and Mechanical College." Approved June 24, 1876.

Senate Bill No. 23—"An Act to regulate the appointment and define the duties of Notaries Public." Approved June 24, 1876.

House Bill No. 88—"An Act to prohibit the sale, exchange or gift of intoxicating liquors in any county, Justice's precinct, city or town in this State that may so elect; prescribing the mode of election and affixing a punishment for its violation." Approved June 24, 1876.

Senate Bill No. 289—"An Act to abolish the office of Notary Public as it existed prior to the adoption of the present Constitution." Approved June 26, 1876.

House Bill No. 318—"An Act to provide for the public printing, binding and stationery by contract." Approved June 27, 1876.

House Bill No. 236—"An Act to authorize the United States bonds now in the Treasury to the credit of the permanent school fund to be disposed of and the proceeds thereof invested in State bonds; likewise to invest in the same manner the funds now in the Treasury to the credit of said fund or that may hereafter be received from all sources." Approved June 30, 1876.

Senate Joint Resolution No. 169—"Joint Resolution instructing our Senators and requesting our Representatives in Congress to ask protection for the frontier, and compensation for past expenditures by the State in that behalf." Approved July 6, 1876.

Senate Bill No. 105—"An Act to amend an Act entitled, 'An Act to ascertain the amount due to the teachers of the public free schools of this State for services rendered as teachers prior to the first day of July, 1873; and to provide for the payment of the same,' approved April 27, 1874." Approved July 6, 1876.

Senate Bill No. 300—"An Act to fix the times of holding the District Courts of the Eighteenth Judicial District of the State of Texas." Approved July 6, 1876.

House Bill No. 235—"An Act to provide for the payment of bonds of the State of Texas, that will become due, and that are retireable in the years 1876 and 1877, and to make adequate provision for the floating indebtedness of the State, and to supply deficiencies in the revenue by the sale of the bonds of the State, and to make an appropriation to carry into effect the provisions of the same." Approved July 6, 1876.

Senate Bill No. 286—"An Act to transfer and re-appropriate the unexpended balance remaining on hand of the appropriation to pay Supreme Court Clerks' fees in felony cases, appropriated under act of March 15, 1875, to pay Clerks of the Appellate Court for fees in felony cases." Approved July 8, 1876.

Senate Joint Resolution No. 250—"Joint resolution instructing our Senators and requesting our Representatives in Congress to secure, if possible, the permanent establishment of a line of steam vessels to carry the United States mail once a week between the city of Galveston and Brazos Santiago." Approved July 11, 1876.

House Bill No. 289—"An Act fixing the times for holding the District Courts in the Eighth Judicial District." Approved July 11, 1876.

House Bill No. 375—"An Act for the relief of the Tyler Tap Railroad Company." Approved July 12, 1876.

Senate Bill No. 122—"An Act to fix the salaries of Special Judges, and to prescribe rules for paying the same, and to make appropriation therefor." Approved July 12, 1876.

House Bill No. 380—"An Act to amend Section 1 of an act entitled, 'An Act to authorize the United States bonds now in the Treasury to the credit of the permanent school fund to be disposed of, and the proceeds thereof invested in State bonds; likewise to invest in the same manner the funds now in the Treasury to the credit of said fund, or that may hereafter be received from all sources,' passed at the present session of the Legislature." Approved July 12, 1876.

Senate Bill No. 94—"An Act to amend an act entitled, 'An Act to provide for the supplying of lost records in the several counties in this State,' approved April 14, 1874." Approved July 13, 1876.

Senate Bill No. 201—"An Act to authorize the corporation of the City of Houston to improve and protect the navigation of Buffalo Bayou." Approved July 13, 1876.

Senate Bill No. 333—"An Act to provide for holding a term of the District Court of Wharton county in August, 1876, for the trial of criminal causes." Approved July 14, 1876.

Senate Bill No. 297—"An Act prescribing the times of holding the District Court in the Twenty-first Judicial District." Approved July 14, 1876.

Senator Stephens, Chairman of the Committee on Engrossed Bills, submitted the following report:

*Hon. R. B. Hubbard, President of the Senate:*

Your Committee on Engrossed Bills have carefully examined and compared, and find correctly engrossed Senate Bill No. 292—"An Act to provide for the issuance of patents for land in certain cases;" also, Senate Bill No. 345—"An Act to authorize sureties on the official bonds of county officers to require their principals in such bonds to give new bonds, and to provide for the giving of such new bonds in such cases."

STEPHENS, *for Committee.*

Senator Crain, by request, introduced a bill, to be entitled, "An Act for the relief of the Aransas Road Company."

Read by caption, and referred to the Committee on Internal Improvements.

Senator Motley introduced a bill, to be entitled, "An Act to endow the Henderson Male and Female College with land grant."

Read by caption, and referred to Committee on State Affairs.

Senator Ledbetter offered the following resolution:

*Resolved*, That the Senate proceed on the 25th day of July next, at 11 o'clock A. M., to elect a President *pro tem.*, in accordance with the pro-



visions of the Constitution requiring the election of a President *pro tem.* at the close of the session.

It was laid on the table subject to call.

Senator Ripetoe offered the following resolution :

WHEREAS, Sectionalism seems to pervade this body, scarcely any question being sprung, but that sectional strife is engendered ; and,

WHEREAS, There appears to be "no balm in Gilead" to calm "the troubled waters;" therefore,

*Be it enacted by the Legislature of the State of Texas,* That the Governor is hereby authorized and required to issue his proclamation ordering an election to determine whether the great empire State of Texas, with all its glorious memories, gallant deeds and hallowed associations, shall be divided, or whether the gallant sons of Texas, forgetting the issues of sectionalism, will swear that Texas, the brightest star that shines in the galaxy of States, shall remain "one and indivisible."

Senator Ripetoe moved to refer it to Committee on State Affairs.

On motion of Senator McLeary, Chairman of that committee, the resolution was tabled.

A message was received from the House, announcing the adoption, by that body, of the report of the Committee of Free Conference on Senate Bill No. 295, "An Act to suppress lawlessness and crime in certain parts of the State," and that the House has appointed, as a Committee of Free Conference, on Senate Bill No. 109, "An Act to regulate juries," Representatives Coleman, McComb, Chesley and Brooks.

The President, after reading their captions, signed House Bill No. 227, "An Act to create the Twenty-seventh Judicial District of the State of Texas."

Also, House Bill No. 7, "An Act to suspend the collection of the road and bridge tax, levied for the year 1876, in certain cases."

Senator Hobby in the chair.

A message was received from His Excellency, the Governor.

Senator Ledbetter in the chair.

Senator Terrell, from the Committee on Internal Improvements, submitted the following minority report :

*Hon. R. B. Hubbard, President of the Senate :*

The undersigned, a member of the Committee on Internal Improvements, to which committee was referred Senate Bill No. 303, entitled, "An Act for the relief of railroad and other internal improvement companies," cannot concur in the recommendation of a majority of the committee that the bill as amended do pass, for the following, among other reasons :

While the bill is general in its terms, its main purpose is to extend relief to the Texas and Pacific Railway Company. The undersigned is not informed that any other railroad, or internal improvement company in the State, will derive any benefit or advantage from the passage of this bill. This being so, the introduction of the bill is a violation of the spirit of the Constitution, which provides that "no local or special law shall be passed, unless notice of the intention to apply therefor shall have been published in the locality where the matter, or thing to be affected, may be situated, which notice shall state the substance of the contemplated law ; and shall be published at least thirty days prior to the introduction

into the Legislature of such bill, and in the manner to be provided by law."

The original bill, as referred to the committee, was intended to cure a forfeiture of the lands and reservations of land secured to the Texas and Pacific Railway Company, by the act of May 2, 1873, because of a failure of that company to construct a part of its line of railway, as required by law, so far as the Legislature has any power to cure a forfeiture, and while the bill, as amended by the committee, does not undertake to grant any relief to any company that has incurred any forfeiture, its passage, in the opinion of the undersigned, would leave the Texas and Pacific Railway Company in a position to enjoy benefits to which it is not by law entitled. In order to present the merits of this question to the consideration of the Senate, it is necessary to inquire into the history and the present position of the Texas and Pacific Railway Company. This I will do as briefly as possible :

More than twenty years ago the Legislature of the State of Texas incorporated two companies, the Southern Pacific Railroad Company and the Memphis, El Paso and Pacific Railroad Company, and gave to each of them the right to build a railway from the eastern boundary of the State to El Paso on the Rio Grande. By an act of July 27, 1871, the Legislature incorporated the Southern Trans-Continental Railway Company, and gave to it the right to construct a railway from the eastern boundary line of the State to El Paso. By the terms of its charter the Southern Trans-Continental Railway Company was authorized to acquire all the rights and franchises of the Memphis, El Paso and Pacific Railroad Company, and did, in pursuance of such authority, become the legal successor of that corporation, which like others since chartered, was more notorious for its promises than their fulfillment.

By an act approved March 3, 1871, the Congress of the United States created the Texas Pacific Railroad Company, and subsequently changed its name to the Texas and Pacific Railway Company. On May 24, 1871, the Legislature of Texas passed an act entitled, "An Act to encourage the speedy construction of a railway through the State of Texas to the Pacific ocean." This act donated six millions of dollars in the bonds of the State to the Southern Pacific Railroad Company and the Southern Trans-Continental Railway Company, and the former of these two companies was required to build its road by way of the city of Tyler, in Smith county. The whole of both lines was required by this act to be completed to the point of junction at Fort Worth by January 1, 1874. This act also provided that all the rights, benefits and privileges granted and intended to be secured by the act to the two companies above named might pass to and rest in the Texas Pacific Railroad Company, in the event of a consolidation of the three companies. The consolidation of the companies took place, and the Texas Pacific Railroad Company became, and is now, the legal successor of the Southern Pacific Railway Company and of the Southern Trans-Continental Railway Company.

The act of May 24, 1871, contains a provision that the Legislature might substitute for the bonds donated by the act, a grant of lands whenever the Legislature had the power to grant lands in aid of works of internal improvement. The Texas Pacific Railroad Company was not satisfied with the provisions of the act of May 24, 1871, and in November, 1871, procured the passage by the Legislature of an act providing,

amongst other things, that the road should not pass by way of the city of Tyler. This act of November, 1871, also gave to the company the right to build a road from Marshall to Jefferson, but provided that the company should not be entitled to apply any part of the subsidy granted to the road between the city of Marshall and the city of Jefferson.

The Constitution of 1869 was amended so as to empower the Legislature to grant the public domain in aid of works of internal improvements; and on the 2d of May, 1873, the Legislature passed an act entitled: "An Act to adjust and define the rights of the Texas and Pacific Railway Company within the State of Texas, in order to encourage the speedy construction of a railway through the State to the Pacific Ocean." This act granted to the company twenty sections of land for every mile of road constructed within the State on all its lines, including the line from Marshall to Jefferson, for which the company was not entitled to receive any subsidy by the terms of the act of November, 1871. The act of May 2, 1873, extended the time allowed the company by the previous acts within which to construct the several lines of road: *and provided*, "That should said company fail to complete either of its said lines within the manner and time hereinbefore prescribed, to the point of junction (meaning Fort Worth), it shall thereafter forfeit all right to any donations of land or donation of lands except upon its completed road."

The company not being able to complete its lines of road within the time prescribed by the act of May 2, 1873, was instrumental in procuring the passage of an act by the Legislature on April 30, 1874, entitled: "An Act to extend the time for the construction of works of internal improvement." This act extended the time within which the company was required to complete its lines for a period of twelve months.

The company was not able to comply with the requirements of the act of April 30, 1874, and was instrumental in procuring the passage of another act, approved March 15, 1875, also, entitled: "An Act to extend the time for the construction of works of internal improvements."

This last act contained the proviso (amongst many others) that the Texas Pacific Railroad Company (meaning the Texas and Pacific Railway Company) shall contract and put in running order as much as twenty miles of road between Brookston and Texarkana by the first day of November, 1875. It is matter of public information that the said company did not construct any road between Brookston and Texarkana by the first day of November, 1875; and, inasmuch as, by the original provisions, contained in the act of May 2, 1873, the company should "forfeit all donations of land and reservation of lands, upon failure to construct as required by law," it follows that the failure of the said company to build twenty miles of road between Brookston and Texarkana by the first day of November, 1875, was a cause of forfeiture of all donations of land and reservation of lands, unless it can be shown that the said company was relieved from the requirements of the act of March 15, 1875. It is pretended that the said company was so relieved by the ordinance of the Constitutional Convention, passed November 23, 1875. The language of the said ordinance plainly forbids any such conclusion. That language is as follows:

"That in view of the financial misfortunes, no existing railroad company, chartered or holding grants under this State, which has hereto-



fore organized and commenced work in good faith, shall be considered as having lost any of its rights, privileges or grants prior to the next session of the Legislature of this State, by virtue of the lapse of time *between now and that time.*"

It is not possible to give the ordinance of the Convention any retro-active effect. It cannot be interpreted to operate backwards, because the language is too plain to admit of any such interpretation.

It will be contended that it is harsh treatment to refuse relief to this company. In this view I cannot concur. While it is not my province or duty to inquire into or state how it happened, that, while Texas was exhausted by a civil war which drained her resources and impoverished her people, a donation of six millions of money was promised to non-resident capitalists owning a railway, still I do say that the Legislature in 1873 was under a species of coercion to make the large land grant and immense reservation in favor of this company, to escape from the intolerable burden of that six millions subsidy debt. We can all remember the astonishment with which the tax-paying people, many of whom were then disfranchised, viewed the creation of that subsidy debt, and the universal dissatisfaction it produced. It is matter of history that the act of 1873, which secured the company that immense reservation, was intended to preserve the State from the imputation of violated faith. That reason no longer exists, and the undersigned is unable to see why Texas should not now resume control of her own domain.

In the opinion of the undersigned, there is no longer any reasonable prospect that the Texas and Pacific Railway Company will be able to carry out its undertaking to build a railway through the State of Texas to the Pacific Ocean.

The people of this State know that the company is applying to the Congress of the United States for the passage of an act to aid it by a guarantee of the interest on its bonds by the government. What is this but an admission by the company of its inability to construct its railway without such aid from the United States? Is it right, under such circumstances, for this State to permit a corporation to tie up from settlement so vast a public domain; after repeated extensions, granted on assurances of an ability to perform in the future?

There are urgent reasons why Texas should not permit herself to be longer trifled with by this giant monopoly.

The claims of the school fund upon the public domain, as already defined by law, entitling it to four millions of acres more than the unlocated half remaining, to compensate for that quantity granted the International Railroad Company; the necessity to utilize three millions of acres set aside by the Constitution for the erection of public buildings and other purposes, and the importance of securing to actual settlers our land, are considerations that appeal to this Legislature to resume the control of the large body of territory heretofore reserved in the hope of securing the construction of a Pacific railway. The four millions over and above the half of the public domain which the State owes the school fund, the three millions dedicated by the Constitution to build a new State Capitol, and the one million also dedicated for a State University—in all, eight millions of acres, must be found out of a little over 30,000,000 of acres, which is all the State now owns, after setting aside alternate sections for school purposes. Does not every consideration of our own interest, and that of our posterity, demand



that these special claims should be first satisfied before longer pursuing our course of profligate and profitless generosity to mammoth corporations?

Texas has promised conditionally by chartered grants to railroads 128,099,240 acres of the public domain, as will be shown by a report made in pursuance of a resolution introduced by the undersigned; this quantity is about four times the amount of her disposable public domain.

In the opinion of the undersigned, the Legislature cannot be justified in passing any act that will leave the Texas and Pacific Railway Company in a condition to claim a reservation of the public domain, until the next session of the Legislature, and also to demand and receive twenty sections of land per mile for road constructed since the first day of November, 1875. The present Constitution does not permit the Legislature to grant more than sixteen sections of land per mile to any railroad company, and forbids any reservation of lands for the benefit of any company.

It will be said that the act now in question does not relieve the company from any forfeiture; but this is not enough if a forfeiture has been incurred and the company is left in a condition to receive and enjoy what the Legislature has not the power to grant.

The ordinance permits this Legislature to grant only such relief as may be consistent *with the interest of the State*; in my opinion it will *not* be for the interest of Texas to grant the relief sought.

Respectfully submitted,

A. W. TERRELL, *one of the Committee.*

Senator Storey in the chair.

Senate Bill No. 303—"An Act for the relief of railroad and other internal improvement companies," being the special order, was taken up, the amendment of Senator Burton to make the relief "six months" instead of "one month," pending.

Senator Burton, by leave of the Senate, withdrew his amendment.

Senator Stephens offered the following amendment:

"The Texas and Pacific Railway Company shall not have the benefit of the provisions of this act unless said company shall file within twenty (20) days with the Secretary of State a full and complete relinquishment of all reservations of land heretofore granted to said company by the State of Texas."

President in the chair.

Senator Stephens moved a call of the Senate.

Call sustained.

Roll called.

ABSENT—Senator Grace.

Senator Thompson offered the following as a substitute for the amendment offered by Senator Stephens:

"*And provided, further,* That no corporation receiving relief under this act shall receive more than sixteen sections of land for any portion of its road hereafter built; *and provided, further,* that this act shall not be construed to revive or continue in force for the benefit of any such corporation, any reservation of the public domain heretofore set aside and reserved from location. But any and all such land reservation, heretofore set aside, shall be held intact by the State for the benefit of the school fund and the first railroad company starting within the limits of

the State and connecting with other roads that shall reach the Rio Grande River, at or near the town of El Paso. And said reservation shall not hereafter be subject to location or survey, until said railroad shall reach the Rio Grande River at the above mentioned point."

Lost by the following vote:

YEAS—Senators Burton, Crain, Francis, McLeary, McCormick, McCulloch, Motley, Smith, Storey, Terrell, Thompson—11.

NAYS—Senators Ball, Blassingame, Brady, Brown, Douglass, Edwards, Grace, Guy, Henry J. R., Henry F. M., Hobby, Ledbetter, Martin, Moore, Piner, Ripetoe, Stephens, Wortham—18.

Senator Smith offered the following amendment to the amendment offered by Senator Stephens:

Add the following words: "Which said reservation shall be held intact for the benefit of the public free schools of the State of Texas."

Accepted by Senator Stephens.

Senator Edwards made the point of order, that neither the amendment nor the amendment to the amendment, was in order, as the Constitution provided that all bills should have but one object, and that should be expressed in its caption; and that this amendment, as well as the amendment to the amendment, would be a violation of that provision.

In relation to the point of order, the President of the Senate (Lt.-Governor Hubbard presiding), ruled as follows:

The chair overrules the point of order, so far as applicable to the amendments now proposed to the bill before the Senate. Section 35, Article 3, of the Constitution, provides that "no bills (except general appropriation bills, which may embrace the various subjects and accounts for and on account of which moneys are appropriated), shall contain more than one subject, which shall be expressed in its title, etc."

The chair holds that this constitutional provision is intended to control the Legislature. Each Senator, under the sanctity of his oath, must be the sole judge, in the forum of conscience, as to whether any bill does contain more subjects than expressed in the title. His vote will be governed accordingly.

It is not for the President to determine any question which legitimately belongs to the body over which he presides. It is his duty to see that the parliamentary rules established by this Senate, and by Congress, are observed. But these relate to the ways and means provided for the enactment of laws, but not to their substance.

Much less could he decide upon the constitutionality of any pending bill before this body. If the unconstitutional act should pass, it then becomes a judicial question, to be determined by the courts, in the mode provided by the Constitution.

When an amendment is offered, entirely distinct from the pending bill, the chair would not hesitate to hold it out of order. And though a delicate question in all cases for a presiding officer, would not hesitate, in an amendment wholly foreign to the subject-matter before the Senate, to rule it out of order. The chair does not think that the case at bar, presented by the Senator, comes within the proposition I have announced. With all due respect, the chair cannot sustain the point of order.

Senator Smith offered the following as an amendment to the amendment offered by Senator Stephens:

Strike out the words, "the Texas and Pacific," in first line of the amendment, and insert in lieu thereof, the word, "no," and after the word "company," in line 2, insert the words, "heretofore chartered."

Accepted by Senator Stephens.

So the amendment, as amended, would read: "No railway company heretofore chartered, shall have the benefit of the provisions of this act, unless said company shall file, within twenty days, with the Secretary of State, a full and complete relinquishment of all reservations of land heretofore granted to said companies by the State of Texas, which said reservations shall be held intact for the benefit of the public free schools of this State."

Senator McCormick in the chair.

Pending the discussion on the above amendment by Senator Terrell, on motion of Senator Brady, the Senate adjourned to 4 P. M.

#### AFTERNOON SESSION.

Senate met pursuant to adjournment. Roll called. Quorum present. President in the chair.

The consideration of Senate Bill No. 303, "An Act for the relief of railroad and other internal improvement companies," was resumed.

Senator Terrell moved a call of the Senate.

Call sustained.

Roll called.

ABSENT—Senators McLeary, Smith, Grace, Henry J. R.—4.

Pending the call the bill went to the table.

On motion of Senator Ford, the rules were suspended, and Senate Bill No. 353, "An Act to provide for an election in the city of Brownsville," was taken up, read second time and ordered engrossed.

Senator Ford moved to still further suspend the rules to place the bill on its third reading.

Carried by the following vote:

YEAS—Senators Ball, Blassingame, Brown, Burton, Douglass, Edwards, Francis, Ford, Grace, Guy, Henry F. M., Hobby, Ledbetter, Martin, McCormick, McCulloch, Moore, Motley, Ripetoe, Stephens, Storey, Terrell, Thompson, Wortham—24.

NAYS—None.

NOT VOTING—Senators Brady, Crain, Henry J. R., McLeary, Piner, Smith—6.

Bill read third time and passed by the following vote:

YEAS—Senators Ball, Blassingame, Brown, Burton, Douglass, Edwards, Francis, Ford, Grace, Guy, Henry J. R., Henry F. M., Hobby, Ledbetter, Martin, McCormick, McCulloch, Moore, Motley, Ripetoe, Stephens, Storey, Terrell, Thompson, Wortham—25.

NAYS—None.

NOT VOTING—Senators Brady, Crain, McLeary, Piner, Smith—5.

On motion of Senator McCormick, the rules were suspended, and Senate Bill No. 292, "An Act to provide for the issuance of patents for land in certain cases," was taken up, read third time and passed.

On motion of Senator Grace, the rules were suspended, and House Bill No. 196, "An Act to provide for the publication of certain decisions of the Court of Appeals," was taken up and read second time.

Senator Ball offered the following amendment:

In Section 4, line 9, strike out, "six," and insert, "four."

Lost.

Senator Smith offered the following amendment:

In Section 4, line 9, strike out, "\$6," and insert, "\$5."

Adopted, by the following vote:

YEAS—Senators Ball, Blassingame, Brady, Douglass, Francis, Guy, Henry F. M., Hobby, McLeary, McCormick, McCulloch, Moore, Motley, Piner, Ripetoe, Smith, Stephens, Thompson, Wortham—19.

NAYS—Senators Brown, Crain, Edwards, Ford, Grace, Henry J. R., Ledbetter, Martin, Terrell—9.

NOT VOTING—Senators Burton, Storey—2.

Bill passed to a third reading.

The Senate being full, the consideration of Senate Bill No. 303 was resumed.

Senator Martin in the chair.

Senator Crain offered the following amendment to Senator Stephens' amendment:

Strike out all after the word, "held," in line 11, and insert, "exempt from location for the benefit of the State: *provided*, that in said reservation shall be set apart, located and appropriated: *First*—For the benefit of the public free schools of the State an amount of land equal to the number of acres granted upon International and ditch certificates. *Second*—Three millions of acres of land for the purpose of erecting a new State Capitol and other necessary public buildings at the seat of government. *Third*—One million of acres for the encouragement, maintenance and support of the University of Texas and its branches."

Pending on adjournment.

A message was received from the House, announcing the passage by that body of House Bill No. 69, "An Act to provide for the election of Justices of the Peace, and to define their powers and jurisdiction."

President in the chair.

On motion of Senator Ball, the Senate adjourned until to-night at 8 o'clock.

#### NIGHT SESSION.

Senate met pursuant to adjournment. President in the chair. Roll called. Quorum present.

The consideration of Senate Bill No. 303, "An Act for the relief of railroads and other internal improvement companies," was resumed, the amendment of Senator Crain to the amendment of Senator Stephens pending.

Senator Smith moved a call of the Senate.

Call sustained.

On motion of Senator Edwards, the call was suspended.

Senator Smith renewed the call.

Seconded.

Roll called.

ABSENT—Senators McLeary, McCulloch, Terrell.

Senator McCormick moved a suspension of the rules to take up Senate Bill No. 239.

Lost.



Senator Storey moved to postpone the further consideration of Senate Bill No. 303, etc., till to-morrow at 9 o'clock A. M.

Senator Edwards made the point of order that the motion to postpone was out of order, while the Senate was under a call.

The point of order was sustained.

Senator Grace moved to suspend the rules and take up Senate Bill No. 262, "An Act to reserve from location in the event of forfeiture," etc. Senate refused.

Senator Francis moved to suspend the rules and take up the substitute for Senate Bill No. 157, "An Act to provide for the support of indigent lunatics."

Carried and bill taken up.

Senator Smith moved to adjourn until to-morrow morning at 9 o'clock.

Lost by the following vote:

YEAS—Senators Ball, Brady, Burton, Guy, Ripetoe, Smith, Stephens, Storey—8.

NAYS—Senators Blassingame, Brown, Crain, Douglass, Edwards, Francis, Ford, Grace, Henry J. R., Henry F. M., Hobby, Ledbetter, McCormick, Moore, Motley, Wortham—16.

NOT VOTING—Senators Martin, McLeary, McCulloch, Piner, Terrell, Thompson—6.

Senator Grace, Chairman of the Committee on Enrolled Bills, submitted the following report:

*Hon. R. B. Hubbard, President of the Senate:*

Your Committee on Enrolled Bills have carefully examined, compared, and find correctly enrolled the following bills:

Senate Bill No. 103, entitled: "An Act to better define the powers and duties of Sheriffs and others officers."

Senate Bill No. 119, entitled: "An Act to regulate proceedings in the County Court relative to deceased persons."

The same have been properly signed and presented to the Governor this day at 9:45 o'clock A. M., for his approval.

GRACE, *Chairman.*

Senator Piner moved a call of the Senate on the bill.

Seconded.

Roll called.

ABSENT—Senators McLeary, Terrell—2.

On motion of Senator Crain, the call was suspended.

Senator Storey moved that the Senate adjourn till to-morrow morning at 9 o'clock.

Lost by the following vote:

YEAS—Senators Ball, Brady, Burton, Guy, Hobby, Piner, Ripetoe, Smith, Storey—9.

NAYS—Senators Blassingame, Crain, Douglass, Edward, Francis, Grace, Henry J. R., Henry F. M., Ledbetter, Martin, McCormick, McCulloch, Moore, Motley, Stephens, Wortham—16.

NOT VOTING—Senators Brown, Ford, McLeary, Terrell, Thompson—5.

Senator Storey moved a call of the Senate.

Seconded, and roll called.

ABSENT—Senators McLeary, Terrell—2.

Pending the call the bill went to the table.

Senate Bill No. 262, "An Act to reserve from location in the event of forfeiture, the public domain now reserved for the benefit of railroads, or railroad companies," was taken up.

Senator Smith moved a call of the Senate.

Call sustained.

Roll called.

ABSENT—Senators McLeary, Terrell—2.

House Bill No. 108, "An Act to enable the city of Galveston to construct a sea-wall and breakwater, to levy a tax and issue bonds therefor, and to grant State aid to the same by donations of lands," was taken up.

Senator Piner moved a call of the Senate.

Call sustained.

Roll called.

ABSENT—Senator McLeary, Terrell—2.

Senator Grace moved to suspend the call on substitute for Senate Bill No. 157.

Carried.

Senator Smith moved a call of the Senate.

On motion of Senator Brady the Senate adjourned until to-morrow morning 9 o'clock.

#### SEVENTY-NINTH DAY.

SENATE CHAMBER,  
AUSTIN, TEXAS, July 20, 1876. }

Senate met pursuant to adjournment. President in the chair. Roll called. Quorum present. Prayer by the Chaplain.

Journal of yesterday adopted.

Senator Brown in the chair.

On motion of Senator Stephens, Senator Guy was excused until noon to-day.

Senator Ledbetter, Chairman of the Committee on Counties and County Boundaries, submitted the following report:

*Hon. R. B. Hubbard, President of the Senate :*

Your Committee on Counties and County Boundaries, to whom was referred House Bill No. 372, entitled, "An Act to create and organize the county of Bennett," have had the same under consideration, and I am instructed by said committee to report the same back to the Senate, and recommend that it do pass.

LEDBETTER, *Chairman.*

Senator Crain, by request, introduced a bill, entitled: "An Act to prevent breaches of the peace, and to carry into effect Section 24, Article 5, of the Constitution."

Read by caption and referred to Judiciary Committee No. 1.

House Bill No. 69, "An Act to provide for the election of Justices of the Peace, and to define their powers and jurisdiction," was taken up and referred to Judiciary Committee No. 1.

On motion of Senator Grace, the rules were suspended, and House Bill No. 196, "An Act to provide for the publication of certain decisions of the Court of Appeals," was taken up, read third time and passed.

On motion of Senator McLeary, the rules were suspended, and House Bill No. 239, "An Act to incorporate the city of Galveston and grant a